

EXHIBIT DD

Jose A. Alemar
February 04, 2021

1

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX

3 -----X
4 SHAARILLE LINZY,

5 PLAINTIFF,

6 -against- Index No.:
7 23280/2020E

8 JOSE A. ALEMAR, AMERICAN UNITED
9 TRANSPORTATION, INC. and AMERICAN UNITED
10 TRANSPORTATION II, INC.,

11 DEFENDANTS.

12 -----X

13 DATE: February 4, 2021

14 TIME: 10:20 A.M.

15 EXAMINATION BEFORE TRIAL of the
16 Defendant, JOSE A. ALEMAR, taken by the
17 Plaintiff, pursuant to an Order, held via
18 video conference, before Sanite Conserve, a
19 Notary Public of the State of New York.
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A P P E A R A N C E S:

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TRANSPORTATION, INC. and AMERICAN UNITED
TRANSPORTATION II, INC.
488 Madison Avenue, 23rd Floor
New York, New York 10022
BY: PETER OVERZAT, ESQ.

ALSO PRESENT:
RAUL ZAMBRANO - SPANISH INTERPRETER

* * *

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

1 R A U L Z A M B R A N O, a Spanish
2 interpreter, solemnly swore to translate
3 the following questions from English to
4 Spanish and answers from Spanish to
5 English:

6 J O S E A L E M A R, called as a witness,
7 having been first duly sworn, through an
8 interpreter, by a Notary Public of the
9 State of New York, was examined and
10 testified as follows:

11 EXAMINATION BY

12 MR. MEIER:

13 Q. Please state your name for the
14 record.

15 A. Jose Antonio Alemar.

16 Q. What is your address?

17 A. [REDACTED],

18 [REDACTED]
19 Q. Good morning, sir. My name is
20 Andrew Meier, and I'm an attorney at
21 Rosenbaum & Rosenbaum, and we represent a
22 woman by the name of Shaarille Linzy, in
23 association with a personal injury action
24 arising from a motor vehicle accident that
25 took place on December 5, 2019.

1 Q. So sir, just so I'm clear.

2 When you're referring to when it happened,
3 what do you mean by that?

4 A. I am explaining that when it
5 occurred, I had just turned on the
6 application. I had not worked yet.

7 Q. So sir, when you say "when it
8 occurred," are you referring to an incident
9 that occurred on December 5, 2019 involving
10 a pedestrian?

11 A. Correct.

12 Q. And just so we're clear. Did
13 the motor vehicle that you were operating,
14 when you just turned on the Uber
15 application, come in contact with a
16 pedestrian on December 5, 2019?

17 A. Correct.

18 Q. Okay. How long had you been on
19 the Uber application prior to coming in
20 contact with a pedestrian on December 5,
21 2019, approximately?

22 A. If I'm not mistaken, ten, 15
23 minutes, or less.

24 Q. And when you were on the Uber
25 application for ten or 15 minutes prior to

1 A. I would say five or seven
2 seconds. I cannot tell you the exact time,
3 but more or less.

4 Q. Sir, approximately ten or 15
5 minutes prior to coming in contact with the
6 pedestrian, you had turned on the Uber app,
7 and it was turned on for that ten to 15
8 minutes prior to and including the moment
9 of impact; that's been your testimony.

10 So with that in mind, sir, at
11 any point in time during the ten to 15
12 minutes that the Uber app was on up until
13 and including the impact, did anybody hail
14 a ride from you?

15 THE INTERPRETER: Do you mind
16 reading that back to me in complete
17 sentences?

18 (Whereupon, the referred-to
19 question was read back by the
20 Reporter.)

21 A. No, sir.

22 Q. It was a yes or a no question.

23 A. No, sir. And I'll repeat it to
24 you, that I had not started working yet.
25 And I need to explain to you, so that I can

1 clear up your question.

2 MR. MEIER: So I'm going to
3 move to strike the nonresponsive
4 portion of the answer.

5 Q. Sir, yes or no. Please just
6 answer yes or no, sir.

7 Had anybody actually hailed you
8 through the Uber app for a ride, yes or no?

9 A. No.

10 MR. MEIER: Thank you. I have
11 no further questions, sir.

12 (Whereupon, at 12:20 P.M., the
13 Examination of this witness was
14 concluded.)

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D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth, I
gave the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time
and place specified hereinbefore.

JOSE ALEMAR

Subscribed and sworn to before me
this _____ day of _____ 20____.

NOTARY PUBLIC

E X H I B I T S

PLAINTIFF EXHIBITS

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2	Photograph	52
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(Original Exhibits retained by Counsel.)

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EXAMINATION BY	PAGE
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Mr. Meier	5
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INFORMATION AND/OR DOCUMENTS REQUESTED

INFORMATION AND/OR DOCUMENTS	PAGE
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(None)

QUESTIONS MARKED FOR RULINGS

PAGE	LINE	QUESTION
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20	18	are you aware of the vehicle and traffic laws prohibition on using tablets or cell phones while operating a vehicle
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C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF QUEENS)

I, SANITE CONSERVE, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 4th day of February 2021.



SANITE CONSERVE

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